



**BILLING CODE: 8070-01-P**

**FEDERAL HOUSING FINANCE BOARD**

**12 CFR Parts 900, 906, and 956 through 999**

**FEDERAL HOUSING FINANCE AGENCY**

**12 CFR Parts 1200, 1206, 1223, and 1261**

**RIN 2590-AA91**

**Repeal of Federal Housing Finance Board Regulations; Technical Amendments to FHFA Regulations**

**AGENCIES:** Federal Housing Finance Agency; Federal Housing Finance Board.

**ACTION:** Final rule.

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**SUMMARY:** The Federal Housing Finance Agency (FHFA) is repealing two parts of the Federal Housing Finance Board (Finance Board) regulations, which define terms used in Finance Board regulations, and which describe the process by which the Finance Board conducted its monthly interest rate survey (MIRS). The repealed definitions are either obsolete or duplicate definitions that FHFA has previously adopted. The regulation relating to the MIRS has become outdated because it does not accurately describe the manner in which FHFA currently conducts the survey. Although FHFA intends to continue to conduct the MIRS in the same manner as it is doing presently, there is no need to carry over this provision into its own regulations. This final rule also repeals a number of subchapters of the Finance Board regulations that it had previously reserved, but which no longer serve any purpose because they include no regulatory text,

corrects inaccurate cross-references in regulations described in this rulemaking, and amends a table to update information relating to information collections under the Paperwork Reduction Act.

**DATES:** This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Vickie R. Olafson, Assistant General Counsel, *Vickie.Olafson@FHFA.gov*, (202) 649-3025 (this is not a toll-free number), Federal Housing Finance Agency, 400 Seventh Street, SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background and Analysis**

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA)<sup>1</sup> created FHFA as a new independent agency of the Federal Government, and transferred to FHFA the supervisory and oversight responsibilities of the Finance Board over the Federal Home Loan Banks (Banks), the oversight responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO) over the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (the Enterprises), and certain functions of the Department of Housing and Urban Development.<sup>2</sup> Under section 1313(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), FHFA is responsible for ensuring that the Banks and the Enterprises operate in a safe and sound manner, including that they maintain adequate capital and internal controls, that their activities foster liquid, efficient, competitive and

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<sup>1</sup> HERA, Pub. L. 110–289, 122 Stat. 2654.

<sup>2</sup> *See id.* at section 1101, 122 Stat. 2661–62 (codified at 12 U.S.C. 4511, 4511 note, and 4513).

resilient national housing finance markets, and that they carry out their public policy missions through authorized activities.<sup>3</sup> The Banks and the Enterprises remain subject to, and continue to operate under, regulations promulgated by the Finance Board and by OFHEO and HUD, respectively, until such regulations are superseded by regulations issued by FHFA.<sup>4</sup> The Finance Board regulations that are the subject of this rulemaking have remained in effect pursuant to that authority.

On April 3, 2018, FHFA published a notice of proposed rulemaking to repeal certain outdated Finance Board regulations.<sup>5</sup> FHFA proposed to repeal definitions under the Finance Board regulations that are obsolete or that duplicate FHFA definitions, and to repeal an outdated Finance Board regulation that describes the process the Finance Board used to conduct the MIRS. FHFA also proposed to repeal subchapters of the Finance Board regulations that were reserved and no longer serve any regulatory purpose. The comment period ended on May 18, 2018. FHFA received no comments in response to any part of the proposed rulemaking, and thus is finalizing the amendments to the Finance Board regulations as proposed.

*A. Definitions – Finance Board Part 900*

FHFA proposed repealing the Finance Board definitions located in Subchapter A, which consists of part 900 of the Finance Board regulations, and includes definitions of forty-two terms that had been used throughout the Finance Board regulations. In 2013 FHFA carried over into its own regulations (at part 1201) most of the Finance Board definitions, but did not repeal the Finance Board definitions at that time because a number of substantive Finance Board regulations that used those terms remained in

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<sup>3</sup> 12 U.S.C. 4513(a).

<sup>4</sup> 12 U.S.C. 4511 note.

<sup>5</sup> Repeal of Federal Housing Finance Board Regulations, 83 FR 14205 (Apr. 3, 2018).

effect.<sup>6</sup> FHFA has now proposed repealing all of the definitions within part 900 of the Finance Board regulations because, since 2013, FHFA has relocated or repealed all of the substantive Finance Board regulations, other than those relating to Bank capital requirements, which are the subject of a separate rulemaking.<sup>7</sup> The final rule is identical to the proposed rule on this topic.

*B. Finance Board Part 906*

FHFA proposed repealing subchapter B, consisting of part 906 of the Finance Board Regulations that contains reserved subparts A and C, and subpart B, § 906.5. Section 906.5 describes the manner in which the Finance Board conducted the “Monthly Survey of Rates and Terms on Conventional One-Family Non-farm Mortgage Loans,” commonly referred to as the “Monthly Interest Rate Survey” or “MIRS.” The MIRS is a monthly survey of mortgage lenders that solicits information on the terms and conditions on all conventional, single-family, fully amortizing, purchase-money mortgage loans closed during the last five working days of the preceding month. It was originally conducted by the Federal Home Loan Bank Board (FHLBB), and was continued by the Finance Board, in accordance with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the legislation that abolished the FHLBB and established the Finance Board as its successor. FHFA also has continued to conduct the survey and publish the data tables monthly, as successor to the Finance Board.

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<sup>6</sup> See Relocation of Regulations, 78 FR 2319 (Jan. 11, 2013).

<sup>7</sup> See Federal Home Loan Bank Capital Requirements, 82 FR 30776 (proposed July 3, 2017). As noted in the proposed rule, certain of those defined terms, such as “capital plan,” “excess stock,” and “advance,” are used within the Finance Board capital regulations at parts 930 and 932, which likely will remain in effect during an extended transition period to the new FHFA Bank capital regulations. 83 FR 14205, 14206. Each of those terms is well understood by the Banks and has been carried over into the FHFA definitions at part 1201 without substantive change, and to the extent any interpretive questions may arise with respect to parts 930 and 932 after the definitions in part 900 are repealed, the Banks may look to the identical definitions in part 1201 of the FHFA regulations to address those questions. *Id.*

Historically, two housing finance benchmarks have been based on data obtained through the MIRS: (1) the “national average one-family house price,” which, between 1980 and 2008, Fannie Mae and Freddie Mac were statutorily required to use in making annual adjustments to the conforming loan limit;<sup>8</sup> and (2) the Adjustable Rate Mortgage (ARM) Index, which at one time was widely used by lenders in determining the appropriate periodic interest rate adjustment on their ARM loans.

Adjustments in the conforming loan limits for Fannie Mae and Freddie Mac are no longer based on data collected through the MIRS. Some lenders, however, may still use FHFA’s ARM Index, which is derived from MIRS data, as one factor in pricing mortgage loans that they originate. In addition, businesses, trade associations, and government agencies at both the federal and state level rely upon the MIRS data for various business and regulatory purposes.

FHFA intends to continue conducting the MIRS and publishing the data results on its website monthly. Because the current MIRS regulation includes an outdated description of the manner in which the survey is conducted, however, and is not necessary in order to implement the statutory mandate that FHFA conduct the survey, FHFA has determined that the regulation is unnecessary.<sup>9</sup> Given the absence of any comments on the proposed rule, the final rule is also identical to the proposed rule on this topic.

*C. Finance Board Parts 956-999 [Reserved] and Subchapters F-M [Reserved]*

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<sup>8</sup> The Housing and Community Development Act of 1980 tied the Fannie Mae and Freddie Mac conforming loan limits to MIRS. *See* Pub. L. 96-399, Title III, section 313(a), (b), 94 Stat. 1644-45 (Oct. 8, 1980).

<sup>9</sup> *See* Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101-73, Title IV, section 402(e), 103 Stat. 359-360 (Aug. 9, 1989), codified at 12 U.S.C. 1437 note (regarding the continuation of the ARM Index).

The proposal also would have repealed subchapters F-M, consisting of parts 956-999 of title 12 of the Code of Federal Regulations (CFR), which are Finance Board provisions that are designated as “[r]eserved.” These reserved parts are currently the only items under subchapters F-M of chapter IX of title 12, and because they contain no substantive provisions there is nothing to revise and relocate to the FHFA regulations. Consequently, FHFA has determined that unless it affirmatively removes the reference to those parts as being reserved and removes subchapters F-M, those references and empty subchapters F-M would remain in the CFR after FHFA has removed or relocated all of the other substantive Finance Board regulations. Accordingly, in the interest of ensuring that all Finance Board regulations that will not be carried forward into the FHFA regulations are removed from the CFR, the final rule adopts the proposed provision to repeal without change.

#### *D. Other Amendments*

FHFA is also using this final rule as a vehicle to address six other matters, each of which is technical in nature, that FHFA had not included in the proposed rule.

The Paperwork Reduction Act of 1995 (PRA)<sup>10</sup> and the implementing regulations of the Office of Management and Budget (OMB)<sup>11</sup> require FHFA to display a currently valid control number for each collection of information the Agency conducts or sponsors. To satisfy this requirement, § 1200.4(b) of FHFA’s regulations includes a table identifying each section of the regulations that contains an information collection requirement and showing, for each of those collections, the control number assigned by OMB and the expiration date of that control number. FHFA is using this final rule as a

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<sup>10</sup> 44 U.S.C. 3501 *et seq.*

<sup>11</sup> 5 CFR part 1320.

means to update the information contained in that table to reflect recent OMB actions and approvals.

Separately, § 1261.9(c) of FHFA's Federal Home Loan Bank directorship regulations includes an inaccurate cross-reference to a provision within FHFA's minority and women inclusion regulations. The regulation currently refers to 12 CFR 1207.21(b)(5), which FHFA relocated in 2017 to 12 CFR 1223.21(b)(7).<sup>12</sup> The cross-referenced provision requires the regulated entities to have policies to encourage the consideration of diversity when nominating or soliciting nominations for positions on their boards of directors. FHFA is also using this final rule as a means to correct the cross reference within 12 CFR 1261.9(c).

This final rule also corrects inaccurate cross-references that had not been updated in four other regulations, as follows. First, the reference to "12 U.S.C. 3645" in § 1206.3(a)(3) is replaced with "12 U.S.C. 4635." Second, the reference to "§ 1223.21(b)(6)" in § 1223.3(b) is replaced with "§ 1223.21(b)(9)." Third, the reference to "§ 1207.3(b)" in § 1223.21(b)(9) is replaced with "§ 1223.3(b)." Fourth, the reference to "§§ 1207.20 and 1207.21" in § 1223.23(b)(20) is replaced with "§§ 1223.20 and 1223.21."

The Administrative Procedure Act (APA) provides that an agency may amend its regulations without going through a notice and comment rulemaking if it finds good cause that it would be "impracticable, unnecessary, or contrary to the public interest."<sup>13</sup>

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<sup>12</sup> The relocation and redesignation occurred in two phases. In March 2017, FHFA redesignated the Minority and Women Inclusion (MWI) regulations that apply to the regulated entities from 12 CFR part 1207 to 12 CFR part 1223, as a result of which § 1207.21(b)(5) became § 1223.21(b)(5). *See* Minority and Women Outreach Program, 82 FR 14992, 14993 (Mar. 24, 2017). In July 2017, FHFA again amended the MWI regulations that apply to the regulated entities by, among other things, redesignating § 1223.21(b)(5) as § 1223.21(b)(7). *See* 82 FR 34388, 34395-96 (July 25, 2017).

<sup>13</sup> 5 U.S.C. 553(b)(B).

Each of the six amendments described above is technical in nature and does not present any issues on which public comment would be necessary. Moreover, it is consistent with the public interest for FHFA to correct inaccurate citations within its regulations and to ensure that it periodically updates the information pertaining to OMB control numbers and the expiration dates for its collections of information. Accordingly, FHFA finds that there is good cause for amending these two provisions without an opportunity for prior notice and comment.

## **II. Considerations of Differences Between the Banks and the Enterprises**

Section 1313(f) of the Safety and Soundness Act requires the FHFA Director, when promulgating regulations “of general applicability and future effect” relating to the Banks, to consider the differences between the Banks and the Enterprises as they may relate to the Banks’ cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure, and joint and several liability.<sup>14</sup> As was stated in the proposed rule, FHFA has determined that no such analysis is required in this case because the final rule would not impose any new obligations on the Bank or have any future effect on their rights and responsibilities.

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<sup>14</sup> 12 U.S.C. 4513(f).

### **III. Paperwork Reduction Act**

The PRA requires that FHFA consider the impact of paperwork and other information collection burdens imposed on the public.<sup>15</sup> Under the PRA and OMB's implementing regulations, an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid control number assigned by OMB.<sup>16</sup> The MIRS addressed by 12 CFR 906.5 is a collection of information that OMB has approved under control number 2590-0004, which is due to expire on September 30, 2020.

Although the final rule removes the descriptive provision regarding the MIRS that now appears at 12 CFR 906.5, that removal does not change any aspect of the information collection; that is, FHFA will continue to conduct the survey in accordance with the terms of the existing PRA clearance. Therefore, FHFA has not submitted to OMB a request to approve a revision to control number 2590-0004.

### **IV. Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a final regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include a regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of this rulemaking and certifies that it will not have a significant economic impact on a substantial number of small entities because the amendments are

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<sup>15</sup> See 44 U.S.C. 3507(a), (d).

<sup>16</sup> See 44 U.S.C. 3512(a); 5 CFR 1320.8(b)(3)(vi).

entirely technical in nature. Even if the final rule were to have an economic impact, it would apply only to the regulated entities, which are not small entities for purposes of the Regulatory Flexibility Act.

#### **V. Congressional Review Act**

FHFA has determined that this regulatory action does not qualify as either a “rule” or a “major rule” under the Congressional Review Act. *See* 5 U.S.C. 804(2), (3).

#### **List of Subjects**

##### *12 CFR Part 900*

Federal home loan banks, Office of finance, Regulated entity.*12 CFR Part 906*

Conventional one-family non-farm mortgage loans, Government contracts, Minority businesses, Monthly interest rate survey, Mortgages, Reporting and recordkeeping requirements.

##### *12 CFR Part 1200*

Organization and functions (Government agencies), Reporting and recordkeeping requirements, Seals and insignia.

##### *12 CFR Part 1206*

Federal home loan banks, Reporting and recordkeeping requirements.

##### *12 CFR Part 1223*

Civil rights, Equal employment opportunity, Government contracts, Minority businesses.

##### *12 CFR Part 1261*

Banking, Banks, Conflicts of interest, Elections, Ethical conduct, Federal home loan banks, Financial disclosure, Reporting and recordkeeping requirements.

**Authority and Issuance**

Accordingly, for reasons stated in the preamble and under the authority of 12 U.S.C. 4511, 4512, 4513, and 4526, FHFA amends subchapters A, B, and F-M of chapter IX and subchapters A and D of chapter XII of the Code of Federal Regulations as follows:

**CHAPTER IX—FEDERAL HOUSING FINANCE BOARD**

**SUBCHAPTER A—[REMOVED AND RESERVED]**

- 1. Remove and reserve subchapter A, consisting of part 900.

**SUBCHAPTER B—[REMOVED AND RESERVED]**

- 2. Remove and reserve subchapter B, consisting of part 906.

**SUBCHAPTERS F-M—[REMOVED]**

- 3. Remove reserved subchapters F-M, consisting of reserved parts 956 through 999.

**CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY**

**SUBCHAPTER A—ORGANIZATION AND FUNCTIONS**

**PART 1200—ORGANIZATION AND FUNCTIONS**

- 4. The authority citation for part 1200 continues to read as follows:

**Authority:** 5 U.S.C. 552, 12 U.S.C. 4512, 12 U.S.C. 4526, 44 U.S.C. 3506.

- 5. In § 1200.4, revise the table in paragraph (b) to read as follows:

**§ 1200.4 OMB control numbers assigned under the Paperwork Reduction Act.**

\* \* \* \* \*

(b) \* \* \*

<b>12 CFR part or section where identified and described</b>	<b>OMB control no.</b>	<b>Expiration date</b>
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1222.22 .....	2590-0013	07/31/2018
1222.23 .....	2590-0013	07/31/2018
1222.24 .....	2590-0013	07/31/2018
1222.25 .....	2590-0013	07/31/2018
1222.26 .....	2590-0013	07/31/2018
1223.23 .....	2590-0014	07/31/2018
1261.7 .....	2590-0006	02/28/2021
1261.12 .....	2590-0006	02/28/2021
1261.14 .....	2590-0006	02/28/2021
1263.2 .....	2590-0003	03/31/2020
1263.4 .....	2590-0003	03/31/2020
1263.5 .....	2590-0003	03/31/2020
1263.6 .....	2590-0003	03/31/2020
1263.7 .....	2590-0003	03/31/2020
1263.8 .....	2590-0003	03/31/2020
1263.9 .....	2590-0003	03/31/2020
1263.11 .....	2590-0003	03/31/2020
1263.12 .....	2590-0003	03/31/2020
1263.13 .....	2590-0003	03/31/2020
1263.14 .....	2590-0003	03/31/2020
1263.15 .....	2590-0003	03/31/2020
1263.16 .....	2590-0003	03/31/2020
1263.17 .....	2590-0003	03/31/2020
1263.18 .....	2590-0003	03/31/2020
1263.19 .....	2590-0003	03/31/2020
1263.24 .....	2590-0003	03/31/2020
1263.26 .....	2590-0003	03/31/2020
1263.31 .....	2590-0003	03/31/2020
1264.4 .....	2590-0001	12/31/2018
1264.5 .....	2590-0001	12/31/2018
1264.6 .....	2590-0001	12/31/2018
1266.17 .....	2590-0001	12/31/2018
1268.7 .....	2590-0008	02/29/2016
1277.22 .....	2590-0002	04/30/2020
1277.28 .....	2590-0002	04/30/2020
1290.2 .....	2590-0005	03/31/2020
1290.3 .....	2590-0005	03/31/2020
1290.4 .....	2590-0005	03/31/2020
1290.5 .....	2590-0005	03/31/2020

1291.5 .....	2590-0007	03/31/2020
1291.6 .....	2590-0007	03/31/2020
1291.7 .....	2590-0007	03/31/2020
1291.8 .....	2590-0007	03/31/2020
1291.9 .....	2590-0007	03/31/2020

**PART 1206—ASSESSMENTS**

6. The authority citation for part 1206 continues to read as follows:

**Authority:** 12 U.S.C. 4516.

**§ 1206.3 [Amended]**

7. Amend § 1206.3(a)(3) by removing the reference “12 U.S.C. 3645” and adding in its place the reference “12 U.S.C. 4635”.

**SUBCHAPTER B—ENTITY REGULATIONS**

**PART 1223—MINORITY AND WOMEN INCLUSION**

8. The authority citation for part 1223 continues to read as follows:

**Authority:** 12 U.S.C. 4520 and 4526; 12 U.S.C. 1833e; E.O. 11478.

**§ 1223.3 [Amended]**

9. Amend § 1223.3(b) by removing the reference “§ 1223.21(b)(6)” and adding in its place the reference “§ 1223.21(b)(9)”.

**§ 1223.21 [Amended]**

10. Amend § 1223.21(b)(9) by removing the reference “§ 1207.3(b)” and adding in its place the reference “§ 1223.3(b)”.

**§ 1223.23 [Amended]**

11. Amend § 1223.23(b)(20) by removing the reference “§§ 1207.20 and 1207.21” and adding in its place the reference “§§ 1223.20 and 1223.21”.

**SUBCHAPTER D—FEDERAL HOME LOAN BANKS**

**PART 1261—FEDERAL HOME LOAN BANK DIRECTORS**

12. The authority citation for part 1261 continues to read as follows:

**Authority:** 12 U.S.C. 1426, 1427, 1432, 4511 and 4526.

**§ 1261.9 [Amended]**

13. Amend § 1261.9(c) introductory text by removing the reference “§ 1207.21(b)(5)” and adding in its place the reference “§ 1223.21(b)(7)”.

Dated: August 2, 2018.

Melvin L. Watt,  
*Director, Federal Housing Finance Agency.*

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